IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6331 of 1989

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HABIBBHAI R. KHEDAVHORA AND ANR.

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION AND ANR.

Appearance:

1. Special Civil Application No. 6331 of 1989

MR PRABHAKAR UPADHYAY for MR MUKESH H RATHOD for Petitioners Nos. 1-2

MR MD PANDYA for Respondents Nos. 1-2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 20/09/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioners are the Drivers serving in the respondent - Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation"). The petitioners challenge the order dated 13th May, 1988 in so far as it confers the benefit of absorption on regular time-scale with effect from 1st April, 1988 and not with effect from the date when the petitioners completed 180 days' service as "Badli" workers. The petitioners also seek implementation of the Settlements dated 5th March, 1962 and 23rd November, 1984. The petitioners also seek the benefit of the award dated 25th March, 1988 passed by the Industrial Tribunal, Ahmedabad in Reference Nos.997/1984, 1072/1984 and 1080/1984.

Learned advocate Mr.Upadhyay has submitted that by the above referred Settlement dated 5th March, 1962 the Corporation had agreed that employees working for 180 days continuously including weekly offs and other paid holidays will be brought on regular time-scale of pay and will get all the benefits available to the employees on regular time-scale. Under clause 29 of the Settlement dated 23rd November, 1984 also, the Corporation agreed that Badli workers would be absorbed as daily wager and on completion of 240 days' service as daily wager they will be absorbed in regular time-scale. In the submission of Mr.Upadhyay, the petitioners are, therefore, entitled to absorption in regular time-scale from the date the petitioners completed 180 days' service or atleast on completion of 240 days' service. Mr.Upadhyay has submitted that the aforesaid clause 29 has been considered by the Industrial Tribunal in the aforesaid award dated 25th March, 1988. By the said award the concerned claimants have been ordered to be absorbed as permanent employees on completion of 240 days' service as daily wage employee. The petitioners being similarly situated, the petitioners are entitled to the parity and the identical relief. However, the Corporation has, by absorbing the petitioners in regular time-scale with effect from 1st April, 1988, meted discriminatory treatment to the petitioners. Therefore, the present petition.

The petition is contested by the Corporation. Learned advocate Mr.Pandya has read out the counter affidavit. He has submitted that creation of posts of Driver and Conductor would depend upon the scheduled plan, entitlement to weekly off of the crew, i.e. the Drivers and the Conductors and the additional requirement for festivals, celebrations, etc. He has submitted that in view of the economic measures implemented by the

Corporation in the year 1981, the ratio of leave reserve was substantially altered i.e. the ratio of 1:8 was reduced to 1:12. He has submitted that the settlement arrived at on 5th March, 1962 has undergone considerable changes by subsequent settlements in the following years. Clause 29 of the Settlement dated 23rd November, 1984 did not confer right to absorption in regular time-scale automatically on completion of 240 days' service as contended by Mr.Upadhyay. He has submitted that since the said Settlement, by General Standing Order No.865/1988, once again the Corporation brought about changes in the ratio of leave reserve and in considering the leave reserve posts as permanent posts instead of as temporary posts. This was done precisely with a view to benefiting the Badli workers who had been working as such for a long time. It was pursuant to the said General Standing Order that the petitioners and others came to be absorbed in regular time-scale by impugned order dated 4th June, 1988. In the submission of Mr.Pandya the claim made by the petitioners for absorption in time-scale on completion of 240 days' service or 180 days' service as Badli workers is contrary to the aforesaid Clause 29 and, as such, cannot be granted. He has also submitted that the benefit of the award of the Tribunal dated 25th October, 1988 cannot be extended to the petitioners. Besides, the said award is subject matter of challenge before this Court in Special Civil Application No.10974/1993 and other petitions.

Clause 25 of the Settlement dated 5th March, 1962 refers to the daily wage employees. It provides that, "the employees working for 180 days continuously including weekly offs and other paid holidays will be brought on time-scale of pay and will get all the benefits available to the employees on time-scale."

Be it noted that the said clause refers to the daily wage employees and not the Badli workers that the petitioners were. Besides, there has been a substantial change in the service condition of the Badli workers/daily wagers over the years. In view of the later Settlement governing the service condition of such Badli workers/daily wagers, the aforesaid Settlement dated 5th March, 1962 cannot be pressed into service. By Settlement dated 23rd November, 1984 the Corporation agreed to a formula for recruitment. Clause 29 of the said Settlement provides, inter alia, that the candidates on the wait-list shall be appointed as Badli workers in seriatim; the candidate appointed as Badli worker if has worked on all days when he is offered work atleast for one year will be absorbed as daily wage employee against

the vacant post keeping in view his performance and conduct; a daily wage employee, if has worked atleast for 240 days, will be absorbed in regular time-scale against the vacant post keeping in view his performance and conduct as daily wage employee. Thus, it is evident that a Badli worker would first be absorbed as a daily wage employee and on completion of 240 days' service as daily wage employee would be absorbed in regular time-scale. The salient features noticeable are : the said clause does not provide for absorption of a Badli worker in regular time-scale; performance and conduct of a candidate as Badli worker and as daily wage employee are relevant consideration for absorption in regular time-scale. For appointment as daily wage employee, a minimum service for one year is sine qua non and, for absorption in regular time-scale, a minimum 240 days' service as daily wage employee is sine qua non. The availability of a vacant post is also a condition precedent. The said clause does not envisage appointment as daily wage employee on completion of one year's service as Badli worker or absorption in regular time-scale on completion of 240 days' service as daily wage employee as a matter of course. The said clause provides for a minimum requirement for appointment as daily wage employee and for absorption in regular time-scale but not for automatic appointment as daily wage employee or absorption in regular time-scale on completion of given length of service. The petitioners' claim for absorption in regular time-scale on completion of 180 days' service as Badli worker is misconceived as the said Clause 29 does not provide for absorption of Badli worker in regular time-scale or for automatic absorption in regular time-scale. In spite of the said clause the petitioners came to be absorbed in regular time-scale by impugned order dated 4th June, 1988 with effect from 1st April, 1988 pursuant to the above referred GSO No.865/1988 issued on 19th April, 1988. By the said GSO No.865/1988 the Corporation improved the leave reserve ratio and, the leave reserve posts which were hitherto considered to be temporary, were decided to be treated as permanent posts. Pursuant to the said decision some more posts were created. Such posts and the leave reserve posts became available for appointment in regular time-scale. Consequently, the petitioners and 141 others were absorbed in regular time-scale with effect from 1st April, 1988. The petitioners, therefore, cannot have a legitimate grievance against their absorption in regular time-scale with effect from 1st April, 1988. It may also be noted that prior to this petition the petitioners never raised claim/industrial dispute for absorption in regular time-scale on

completion of 180 days' service.

As to the award dated 25th March, 1988 passed in Reference Nos.997/1984, 1072/1984 and 1080/1984, it should be noted that the said Reference were made in connection with the Drivers and Conductors who had completed 240 days' service and who were discharged from service on 30th June, 1983 on account of rainy season. Admittedly, the petitioners were not amongst the said claimants. The petitioners also did not form that class of Drivers who were discharged from service on 30th June, 1983 on account of rainy season. The petitioners, therefore, cannot be said to be similarly situated as those claimants. In my view, therefore, the petitioners are not entitled to claim parity or the relief granted by the Tribunal.

No other contention is raised before me. The petition is dismissed. Rule is discharged. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)

/sakkaf